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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,008	12/11/2001	Jean-Yves Bacques	11027.26USWO	6927
7590 09/08/2004			EXAMINER	
Merchant & Gould P C P O Box 2903 Minneapolis, MN 55402-0903			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/018,008	Applicant(s) BACQUES ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
 4a) Of the above claim(s) 7, 8, 19 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-18, 20, 21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Claims 7, 8, 19, and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as set forth in the previous Office Action.

Drawings

2. The proposed drawings are disapproved for containing new matter: the original specification does not teach the specificities of the container with the size location of the spot adhesive.

In view of the disapproval of the drawings, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container with spot adhesive, the various dimensions of D1, D2, D1', D1'', and the container with only the connecting portion formed of only spot adhesive must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the

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drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1-6, 9-16, 18, 20-21, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the tear-off panel does not seem have the three foldable side edges.

In claim 10, it is unclear whether the cutout is the same as a tear-off panel in claim 1. This is a double inclusion.

In claim 15, “tear points” has no antecedent basis.

In claim 16, “D1’”, “D1’” have no antecedent basis.

Regarding claim 18, it is unclear what is the different between the join line and fold lines in claim 18. “fold lines” has no antecedent basis.

Regarding claim 20, it is unclear whether the connecting portion is the same as connecting portions previously recited in claim 17. Please identify.

Regarding claim 21, “one side” has no antecedent basis.

Regarding claim 25, “at least partially connected by precut join lines to said adjacent parts of wall each said adjacent each said adjacent part of walls having respectively an inferior portion, and a bottom wall” is confusing. It is unclear whether each of the adjacent part of walls having a bottom wall.

Regarding claim 25, “flaps” has no antecedent basis.

Claim Rejections - 35 USC § 102/103

4. Claims 1, and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishiguchi et al. (4488641). Nishiguchi teaches a case having a tear off panel D including at least three foldable precut side edges at least two adjacent portion (the two sides of portion B) each being attach to one side edge of the tear off panel, a breakaway bottom portion A including connecting portion. With respect to the pulling of the bottom portion, the claim must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.
5. Claims 11-12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiguchi in view of Desrosiers et al. (6073833). Desrosiers teaches that it is known in the art to provide a perforated line with variable length and variable cuts. It would have been obvious to one of ordinary skill in the art to provide a perforation with variable length and variable cuts in Nishiguchi as taught by Desrosiers to provide the desired cut lines to open the container.
6. Claims 1-6, 10, 17-18, 20, 21, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rouger (FR2581971), or in the alternative, over Rouger in view of either Bozich (5979749) or Dahm (3219181). Rouger teaches a case having a removable panel 4 as shown in 5 and 6. The first wall is connected to the two sidewalls and the bottom wall of the case, and portions of the sidewalls can be detached by the perforation at the opposite tear line 7. It is noted the score line 9 and the two perforations in Fig. 4. With respect to the pulling of the bottom portion, the claim must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover

what a device is, not what a device does, *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

Regarding claim 2, line 9 is foldable as claimed.

Regarding claim 3, line 5 and 6 are open at the two side flaps.

Regarding claims 5-6, panel 2 can be considered as the first panel that can be opened similar to that of panel 4 shown in Fig. 6, and panel 1 is considered as the bottom panel.

Regarding claim 17, panel 2 is the first wall, panel 1 is the bottom wall with side flaps 1a, each with precut portion by line 9 going through each of the side flaps.

Regarding claim 20, note the fourth leaf 4 having a frangible portion by line 6.

To the degree it is argued that Rouger does not teach the frangible portions, Bozich teaches that it is known in the art to provide perforation in a tear strip. It would have been obvious to one of ordinary skill in the art to provide the tearing means with perforation in Rouger as taught by Bozich to provide an alternative tearing means.

Furthermore, it would have been obvious to one of ordinary skill in the art to provide perforations that can be separated by pulling in Rouger as taught by Bozich to provide an alternative tearing means.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rouger in view of Lawrence (2734676). It would have been obvious to one of ordinary skill in the art to provide a join line in the form of a omega astride the fold line (in the cross section) in Rouger as taught by Lawrence to provide an alternative fold line.

8. Claims 11, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouger in view of Cuffey, Jr. et al. (2967010). Cuffey teaches that it is known in the art to

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provide tear strips with rectilinear shape and curved shape. It would have been obvious to one of ordinary skill in the art to provide the tear strips of Cuffey in Rouger to provide an alternative tear strip.

9. Claims 11-12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouger combination with either Bozich or Dahm, and further in view of Desrosiers et al.

(6073833). Desrosiers teaches that it is known in the art to provide a perforated line with variable length and variable cuts. It would have been obvious to one of ordinary skill in the art to provide a perforation with variable lengths and variable cuts in Rouger as taught by Desrosiers to provide the desired cut lines to open the container.

10. Claims 17, 18, 20, 21, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Groom (4570796). Groom teaches a blank of cardboard having a rectangular first panels 12 constructed to form a first side wall including a first (17), a second, a third and a fourth join line, a rectangular second panel 13 constructed to form a bottom wall connected to the first panel at the first join line 17, two side flaps 22 wherein each side flap including connecting portions of precut frangible portions, and a rectangular third panel 11 connected to the first panel at a fourth join line 16.

Regarding claim 21, the edge below portion 29 is open as claimed.

Regarding claim 24, there is a hollowed-out portion 26 in Groom, and one can pull out the first panel by grabbing portion 26 as claimed.

Regarding claim 25, Groom teaches a case having a single blank and having a portion at least partially forming a first side wall 14 having adjacent parts of connected to the first side wall by fold ling lines. The portion being at least partially connected by precut join lines to adjacent

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parts by precut joint lines (not precut joint lines on flap 15, a bottom portion 13, and the inferior portions 23 being secured to flaps 22 connected to the bottom wall by pulling as claimed.

11. Claims 17, 18, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kohlhaas (3372794). Kohlhaas teaches a blank of cardboard having a rectangular first panels 22, constructed to form a first side wall including a first (27), a second, a third and a fourth join line, a rectangular second panel 23 constructed to form a bottom wall connected to the first panel at the first join line 27, two side flaps wherein each side flap including connecting portions of precut frangible portions 61, and a rectangular third panel 21 connected to the first panel at a fourth join line 26.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groom in view of Lawrence (2734676). It would have been obvious to one of ordinary skill in the art to provide a join line in the form of a omega astride the fold line (in the cross section) in Groom as taught by Lawrence to provide an alternative fold line.

Response to Arguments

13. Applicant's arguments filed 06/25/04 have been fully considered but they are not persuasive. Applicant argues that container in Rouger does not teach the pulling of the bottom portion resulted in the frangible portion detaching from the at least two adjacent panel portions. It is noted that "frangible portion" is broad. The tear line in Rouger is a frangible portion as claimed. With respect to the pulling of the bottom portion, the claim must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

In the alternative, it is noted that a frangible tear line often have perforations that would allow the container to be pulled apart in the intended manner as shown by Bozich.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

